

# The Smoke-Free Arizona Act

## “It’s a Benefit, Not a Ban!”



## 2009 Annual Report

Arizona Department of Health Services





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## Executive Summary

On November 7, 2006, Arizona voters approved Proposition 201, the Smoke-Free Arizona Act, A.R.S. § 36-601.01 (“the Act” or “the Law”). The Law went into effect on May 1, 2007, and prohibits smoking inside and within 20 feet of entrances of most enclosed public places and places of employment, with a few exemptions.

Also included in the Proposition was a two-cent tax per pack of cigarettes to be deposited in the Smoke-Free Arizona Fund, which must be used to enforce the provisions of the Law. If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or a pattern of noncompliance with the Act, they are subject to enforcement action. They may receive a Notice of Violation (“NOV”) or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

Arizona Department of Health Services (“ADHS”) and the county health departments work diligently to protect Arizonans from secondhand smoke exposure and to ensure uniform compliance with the Law throughout the State. Delegation agreements have been signed with all but one of the State’s fifteen counties to assist ADHS with education and compliance activities. Funding is provided to these counties using money from the Smoke-Free Arizona Fund.

The county health departments have conducted consultations and on-site visits at local businesses, bars, and restaurants to provide education and to ensure continued compliance with the Smoke-Free Arizona Act. Between May 1, 2008 and April 30, 2009, a total of 66,576 educational visits, consultations, and on-site visits were conducted. Many business proprietors have made steps to go above and beyond the requirements of the Smoke-Free Arizona Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs and moving ashtrays, proprietors have also built outdoor patios, provided designated smoking areas, and established in-house policies that are more strict than the Act to accommodate their employees and customers.

During the second year after the Law went into effect, between May 1, 2008 and April 30, 2009, a total of 1,776 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. Most of the complaints consisted of people smoking outside within twenty feet of an entrance and the presence ashtrays located outside within twenty feet of an entrance.

A total of 40 NOV’s were issued statewide between May 1, 2008 and April 30, 2009, 17 of which were issued by the ADHS Smoke-Free Arizona Program. The majority of the NOV’s were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. The proprietors that were issued these NOV’s faced a total of \$54,800 in civil penalty fines. Numerous settlements were reached with the said recipients and a total of \$14,500 in civil penalty fines were collected.

To attain consistent statewide enforcement of the Act, a toolkit detailing the enforcement routes, administrative or judicial, was given to each county health department by the ADHS Smoke-Free Arizona Program. The toolkit provides guidance to the counties that have the delegated authority to enforce the Act and offers general information to the counties that do not.

In 2008, Arizona earned an A grade on the *American Lung Association State of Tobacco Control Report* for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report states that the hard-fought efforts of the Smoke-Free Arizona campaign continue to make Arizona a leader in protecting the health of its citizens.

## 1.0 Smoke-Free Arizona Program

### 1.1 Background

Secondhand smoke is defined as the combination of smoke exhaled by a smoker and the smoke generated by the burning end of a cigarette (or other tobacco product). Secondhand smoke is a mixture of 4,000 chemical compounds that are released into the air as gases and particles. Of these 4,000 compounds, 69 have been identified as carcinogens or cancer-causing agents, 11 of which have been specifically identified as human carcinogens.

Exposure to secondhand smoke is a health concern for people of all ages. In 1992, the U.S. Environmental Protection Agency (EPA) officially listed secondhand smoke as a Class A carcinogen. In 2006, the U.S. Surgeon General's report stated that there is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to your health.

In November of 2006, the citizens of Arizona made their voices heard by passing the Smoke-Free Arizona Act, A.R.S. § 36-601.01 ("the Act" or "the Law"). The Act protects all Arizonans from the harmful effects of secondhand smoke exposure in most enclosed public places and places of employment and within 20 feet of entrances, open windows, and ventilation systems. Also included in the Act, is a two-cent tax per pack of cigarettes to be deposited in the Smoke-Free Arizona Fund, which must be used to enforce the provisions of the Law. The Act went into effect on May 1, 2007.

*The Smoke-Free Arizona Act prohibits smoking inside most enclosed public places and places of employment and within twenty feet of entrances, open windows, and ventilation systems.*

The Act prohibits smoking inside enclosed public places and places of employment with a few exemptions:

- 1) Private residences, except when used as a licensed child care, adult day care, or health care facility;
- 2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however that not more than fifty percent of rooms rented to guests in a hotel or motel are so designated;
- 3) Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not infiltrate into areas where smoking is prohibited under the provisions of this section;
- 4) Veterans and fraternal clubs when they are not open to the general public;
- 5) Smoking when associated with a religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978;
- 6) Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means; and
- 7) A theatrical performance upon a stage or in the course of a film or television production

For each exemption to the Act, there are specific requirements that must be met to qualify. These criteria are defined in the Act and in the Arizona Administrative Code, Title 9, Chapter 2, Article 1.

Under the Act, the proprietor of a public place or a place of employment is responsible for:

- Removing all indoor ashtrays and smoking receptacles and moving all outdoors ashtrays and smoking receptacles at least 20 feet away of entrances
- Posting the required “No Smoking” signs at every entrance into the establishment
- Educating their employees about the Act
- Prohibiting anyone, such as employees, vendors, visitors, and customers from smoking within 20 feet of all entrances and inside the establishment
- Informing violators by politely requesting that they extinguish their lit tobacco product or that they move at least 20 feet away from the entrance to smoke

If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or a pattern of noncompliance with the Act, they are subject to enforcement action. They may receive a Notice of Violation (“NOV”) or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

## **1.2 Roles and Responsibilities of ADHS**

The provisions of the Act assign implementation and enforcement of the Law to ADHS. In order to accomplish this, the Office of Environmental Health, due to its extensive experience with education, inspections, investigations, and enforcement, oversees the Smoke-Free Arizona Program.

The Smoke- Free Arizona Program is responsible for:

- Providing free signage to businesses
- Maintaining the Smoke-Free Arizona website: [www.smokefreearizona.org](http://www.smokefreearizona.org)
- Answering inquiries coming via the information line: 1-877-AZSTOPS (1-877-297-8677)
- Taking complaints coming from the complaint line: 1-877-4AZNOSMOKE (1-877-429-6676), or from the [nosmokingarizona@azdhs.gov](mailto:nosmokingarizona@azdhs.gov) mailbox
- Answering inquiries from the [smokefreearizona@azdhs.gov](mailto:smokefreearizona@azdhs.gov) mailbox
- Conducting on-site advisory visits
- Maintaining a statewide database used by the county health departments for complaint investigations and referrals
- Providing training to new and existing health educators and environmental health inspectors
- Providing educational materials to county health departments
- Assisting county health departments during complaint investigations or advisory visits by riding along with the health educators or the environmental health inspectors
- Providing guidance to the county health departments with regards to education, compliance, and enforcement
- Initiating enforcement procedures for cases referred by Maricopa, Gila, Pinal, Yavapai, Cochise, and Santa Cruz counties
- Conducting education and compliance activities in Santa Cruz County



### 1.3 Roles and Responsibilities of the County Health Departments

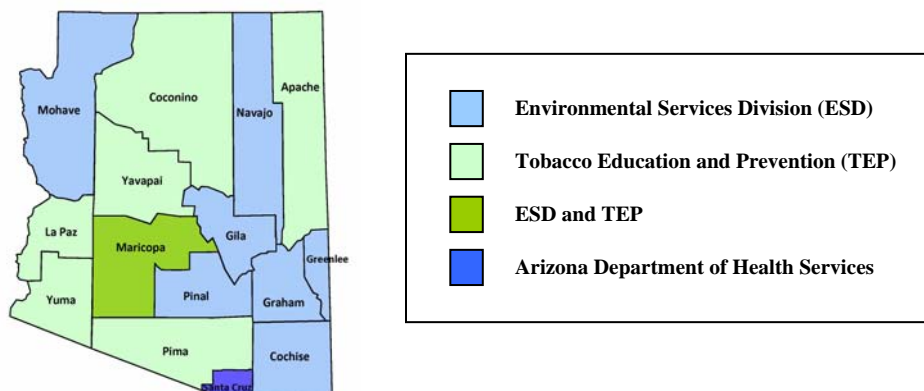
#### 1.3.1 Building on County Health Departments Strengths for Education and Compliance

ADHS and the county health departments work diligently to protect all Arizonans from secondhand smoke exposure and to ensure uniform compliance with the Law throughout the State. Delegation agreements have been signed with all but one of the State's fifteen counties to assist ADHS with education and compliance assistance. Funding is provided to these counties using money from the Smoke-Free Arizona Fund.

Depending on the infrastructure of the county health department, education and compliance assistance are performed by either health educators from their Tobacco Education and Prevention Program or by environmental health inspectors from their Environmental Services Division. The map below represents the lead program for each county:

**Map 1.1 Lead Program Responsible for Education and Compliance for Each County Health Department**

*ADHS and the county health departments work diligently to protect all Arizonans from secondhand smoke exposure and to ensure uniform compliance with the Law throughout the State.*



#### ***Environmental Services Division***

The Environmental Services Division is the lead program for education and compliance in Cochise, Gila, Graham, Greenlee, Mohave, Navajo, and Pinal counties. Environmental health inspectors verify compliance and provide education about the Act during routine food safety and environmental health inspections. Smoke-Free Arizona violations have been included on inspection checklists to monitor compliance with the Act. In addition, environmental health inspectors carry “No Smoking” signs and educational brochures for distribution during routine inspections and complaint investigations.

#### ***Tobacco Education and Prevention Program***

The Tobacco Education and Prevention Program is responsible for compliance and education in Apache, Coconino, La Paz, Pima, Yavapai, and Yuma counties. Health educators have been actively working with businesses in their communities by providing education about the Smoke-Free Arizona Act and explaining the benefits of smoke-free environments.

In these counties, a solid partnership exists between the Tobacco Education and Prevention Program and the Environmental Services Division. For example if an environmental health inspector observes a smoking violation during a routine inspection in a food establishment, he or she will notify the health educator about their observation(s). The health educator will follow-up with the person in charge of the food establishment to ensure compliance with the Law.

### ***Dual Lead Programs – Environmental Services Division & Tobacco Education and Prevention Program***



With a population of 3,880,181, Maricopa County is by far Arizona's most populous county, encompassing more than half of the State's residents. Joining efforts of health educators from the Tobacco Education and Prevention Program and environmental health inspectors from the Environmental Health Services Division is the key to ensuring compliance in Maricopa County.

For establishments permitted under the Maricopa County Health Code, such as restaurants, bars, grocery stores, hotels/motels, and public accommodations, education and complaint investigations are conducted by environmental health inspectors. For non-permitted establishments such as retail stores, repair shops, business offices, and shopping centers, education and complaint investigations are conducted by health educators from the Tobacco Education and Prevention Program.

Environmental health inspectors and health educators are using the same approach with regards to education and compliance. The strategy taken in Maricopa County revealed to be a great success.

### ***ADHS – Santa Cruz County***



The ADHS Smoke-Free Arizona Program is responsible for education and compliance in Santa Cruz County. This includes investigating complaints and conducting on-site inspections. In addition, surveys have been conducted by visiting business complexes, shopping centers, and major public places in the Nogales area in order to assess compliance with the Act. Following the assessment, education was provided to the business owners that were found out of compliance.

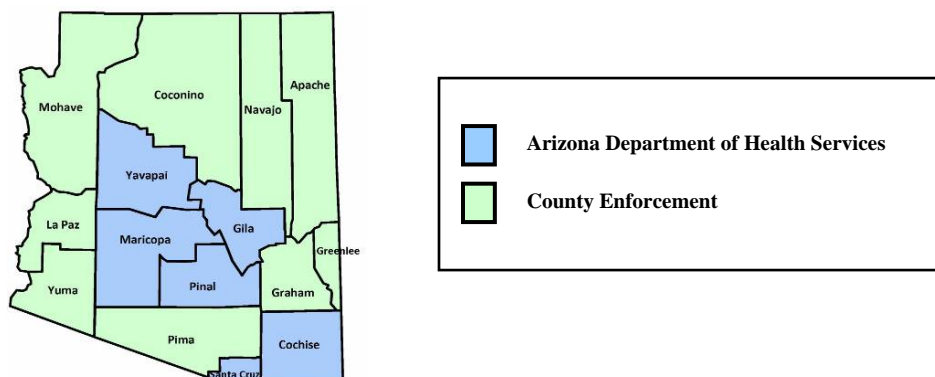
### **1.3.2 Empowering the Counties for Successful Enforcement of the Law**

Nine county health departments have the delegated authority for enforcement activities such as issuing NOV's, assessing civil penalty fines, attending administrative hearings, and seeking injunctive relief.



The map below illustrates who is responsible for enforcement in each county.

**Map 1.2 Enforcement Responsibilities for each County Health Department**



The counties conducting their own enforcement activities are Apache, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima and Yuma. For these counties, the delegation agreement delineates the enforcement duties and additional funding is provided.

*Nine counties have the delegated authority for enforcement; ADHS provides assistance for enforcement for the remaining six counties.*

For the remaining six counties, Maricopa, Gila, Cochise, Yavapai, Pinal, and Santa Cruz, ADHS provides assistance for enforcement. This means that once a pattern of noncompliance is documented, or there is evidence of willful violations of the Act, the county health department refers the case to ADHS for enforcement. The enforcement procedures are explained in Section 5.0 of this report.

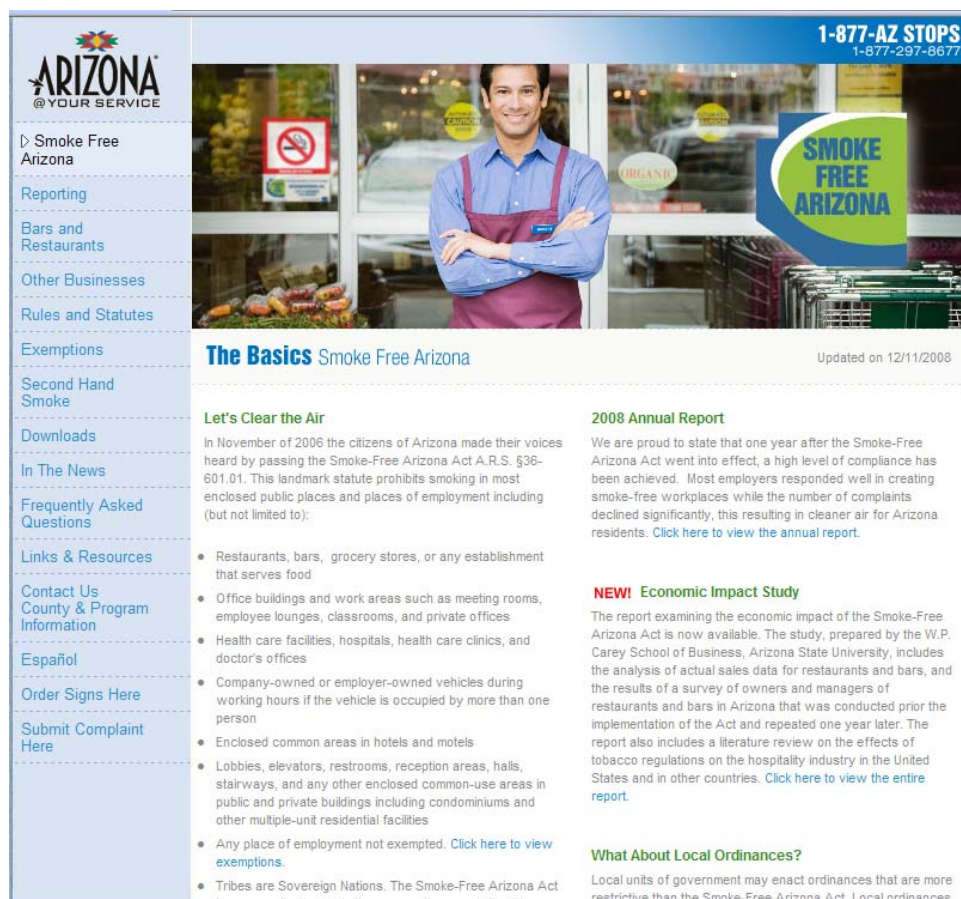
## 2.0 Education

The second year after implementation of the Smoke-Free Arizona Act consisted of advancements and changes in education and outreach to better serve the public and businesses of Arizona.

### 2.1 Enhancing the Website: [www.smokefreearizona.org](http://www.smokefreearizona.org)

The Smoke-Free Arizona website is the main form of communication with the public, business owners, and other partners throughout Arizona. This website explains the benefits of smoke-free enclosed public places and places of employment, and provides information about the requirements of the Act, resulting in a better understanding of the requirements of the Act. The website was updated throughout the second year to better answer the most frequently asked questions received via the toll-free information line and recommendations from statewide partners.

The most popular features of the website are the sign order page and the online reporting system. Since the Law went into effect, business owners have been able to order signage free of charge from the website. In addition, concerned citizens can report violations of the Act by filing a complaint form online in three easy steps.



The screenshot shows the homepage of the Smoke-Free Arizona website. The header includes the logo and the text "ARIZONA @YOUR SERVICE". The main navigation menu on the left lists various topics: Smoke Free Arizona, Reporting, Bars and Restaurants, Other Businesses, Rules and Statutes, Exemptions, Second Hand Smoke, Downloads, In The News, Frequently Asked Questions, Links & Resources, Contact Us County & Program Information, Español, Order Signs Here, and Submit Complaint Here. The main content area features a large image of a smiling man in a blue shirt and red apron standing in front of a restaurant window. To the right of the image is a "1-877-AZ STOPS" phone number. Below the image is the title "The Basics Smoke Free Arizona" and a date "Updated on 12/11/2008". The content is organized into three columns. The first column, titled "Let's Clear the Air", discusses the passage of the Smoke-Free Arizona Act in November 2006 and lists exemptions. The second column, titled "2008 Annual Report", states that a high level of compliance has been achieved and provides a link to view the annual report. The third column, titled "NEW! Economic Impact Study", mentions a report examining the economic impact of the Act and provides a link to view the entire report. At the bottom, there is a section titled "What About Local Ordinances?" which states that local units of government may enact ordinances that are more restrictive than the Smoke-Free Arizona Act.

## 2.2 Answering the Information Line: 1-877-AZ-STOPS (1-877-297-8677)

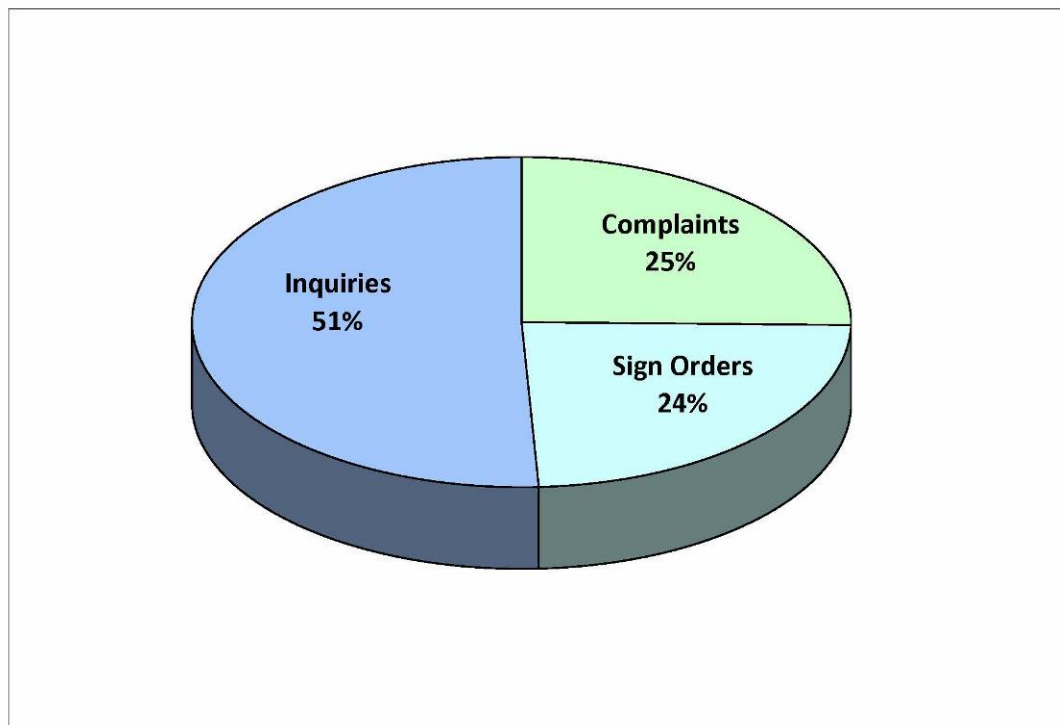
*Nearly half of the calls received by the 24/7 toll-free information line were inquiries about the requirements of the Smoke-Free Arizona Act, while the remaining calls are either requests for free signage or reports of violations*

As required by the Smoke-Free Arizona Act, ADHS provides a 24/7 toll-free information line to answer inquiries from the general public and business owners. During business hours, ADHS Smoke-Free Arizona Program staff answer the calls. After business hours, live assistance is provided by an answering service agency. The answering service agency staff is trained to answer general questions about the Act, fulfill requests for free signage, and document reports of violations. ADHS Smoke-Free Arizona Program staff returns calls from people requesting further assistance during the next business day. An approximate combined total of 3100 calls have been received between May 1, 2008 and April 30, 2009.

ADHS received a total of 1,680 calls during business hours. Nearly half of the calls were inquiries about the Smoke-Free Arizona Act, while the remaining calls were either requests for free signage or from individuals reporting violations of the Act.

The pie chart below shows the categories of calls (by percentage) received during business hours by ADHS.

**Pie Chart 2.1 Percentage of Calls by Category Received by ADHS between May 1, 2008 and April 30, 2009**



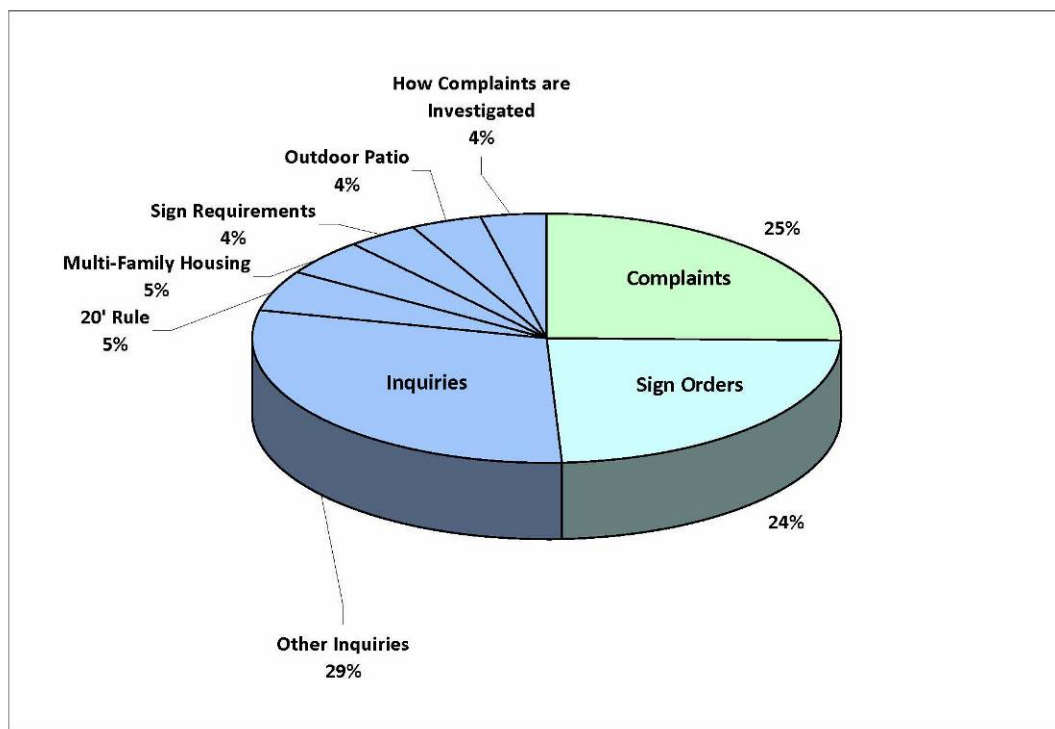
Of these calls, the top five types of inquiries received during business hours were regarding:

1. The reasonable distance from entrances where smoking is prohibited (the “20 Foot Rule”),

2. Issues in multi-family housing with regards to smoke from the neighboring apartment infiltrating their own apartment,
3. “No Smoking” signage requirements,
4. Outdoor patios, and
5. How complaints are investigated.

The pie chart below illustrates the types of calls received and the most frequent questions received.

**Pie Chart 2.2 Percentage of Calls by Category Received by ADHS between May 1, 2008 and April 30, 2009 including the Top Five Inquiries**



### 2.3 Maintaining the Email Addresses:

**smokefreearizona@azdhs.gov and nosmokingarizona@azdhs.gov**

The smokefreearizona@azdhs.gov email address is solely dedicated to answering questions and providing information to the general public and business owners about the requirements of the Smoke-Free Arizona Act. The ADHS Smoke-Free Arizona Program specialists are responsible for replying to all inquiries received in this email mailbox.

The nosmokingarizona@azdhs.gov email address is used to process all reports of violations. Occasionally this email mailbox will receive general questions from citizens and business owners, which are answered by an ADHS Smoke-Free Arizona Program specialist.

## 2.4 Complimentary “No Smoking” Signs

The Smoke-Free Arizona Act requires that most enclosed public places and places of employment in Arizona have a “No Smoking” sign posted at every entrance. To meet the required information, the sign must include:

- The international “No Smoking” symbol or the words “no smoking”;
- A citation to A.R.S. § 36-601.01;
- The telephone number (1-877-4-AZNOSMOKE) for making complaints; and
- The website address (smokefreearizona.org) for making complaints.

Business owners have the option to order “No Smoking” signs free of charge from the Smoke-Free Arizona Program or they may choose to create their own signs as long as the required information is included. The Smoke-Free Arizona Program provides the following types of signs:

- 3 X 5 inch vehicle sticker
- 8 ½ X 11 inch cardstock (an optional 20 Foot Rule add-on is available)
- 4 X 6 inch sticker (with or without the 20 Foot Rule disclosure)

The demand for free signs has remained steady over the last year. Approximately 1,800 sign orders were placed by businesses. In addition, signs are distributed to businesses during complaint inspections, advisory visits, educational visits, and routine food safety inspections conducted by county health educators and health inspectors. A total of 65,737 signs were distributed statewide.



4 X 6 inch sticker with the 20 Foot Rule



4 X 6 inch sticker without the 20 Foot Rule

The most popular sign is the 4 by 6 inch sticker with an adhesive on the back and a UV coating on the front. Most businesses requested signs that could be affixed outside tinted windows and are resistant to the extreme heat and sun exposure. The 4 by 6 inch stickers can be ordered both with and without the 20 Foot Rule disclosure.

## 2.5 Smoke-Free Arizona Brochures

The “Clearing the Air about the Smoke-Free Arizona Act” brochure provides general information about the requirements of the Smoke-Free Arizona Act to employers and the general public. Additional brochures will become available soon to answer the most frequently asked questions and concerns from the public and business owners, including:

- “Clearing the Air for Employers”
- “Clearing the Air About Outdoor Areas”
- “Clearing the Air About Private Residences and Multi-Family Housing”



## 2.6 Keeping Education and Compliance Clear of Mixed Messages

Information provided to the general public and business owners focuses on the benefits of smoke-free enclosed public places and places of employment for all Arizonans. Smoke-Free Arizona Program officials’ role is to increase awareness of the Smoke-Free Arizona Act and the benefits of smoke-free environments, not promote cessation. This approach is taken due to the passionate nature of the Law and to reduce perceived infringement on smokers’ rights. This keeps the education and compliance efforts clear of mixed messages.

Brochures and educational materials clearly focus on the requirements of the Law, rather than encouraging tobacco users to quit. The Arizona’s Smokers Helpline phone number and website are provided as a reference only for individuals looking for free counseling or information about cessation programs in their area.



### 3.0 Outreach

#### 3.1 Reaching Out to Public Places and Places of Employment

Arizona county health departments have conducted consultations and on-site visits at local businesses, bars, and restaurants to provide education and to ensure continued compliance with the Smoke-Free Arizona Act. Between May 1, 2008 and April 30, 2009, a total of 66,576 educational visits and consultations were conducted.

In addition, the ADHS Smoke-Free Arizona Program specialists as well as county health educators and county environmental health specialists conducted 365 educational presentations to large employers and community partners such as colleges, national fraternal organizations, and multiple city departments between May 1, 2008 and April 30, 2009. Combined an estimated 13,995 people attended these educational presentations.

Health fairs were also an opportunity to provide education regarding the requirements of the Smoke-Free Arizona Act. Some of the health fairs attended by ADHS Smoke-Free Arizona Program specialists and county health educators include but are not limited to: large manufacturing plants, chain food headquarters, and county fairs.

#### 3.2 Reaching Out to the Community: Success Stories

##### *Yuma County: Fostering Compliance with the Act*

Bordered by California on the West and Mexico to the South, Yuma County faces many education and compliance challenges. The city of Yuma is a temporary home to field laborers, farming companies from California and winter visitors from other states.

Some of the challenges in dealing with the farming companies is that much of their transportation vehicles are coming from California, where there is no requirements for No Smoking signage on vehicles. Another challenge is that a large number of field workers are smokers and having to be in a transport bus for sometimes up to 2 hours at a time without lighting up is quite difficult. To resolve the issue, Yuma County has reached out with educational efforts to companies involved in the farming business to assist them in complying with the Act as it applies to “vehicle as places of employment.” The county health educators provide the businesses with a simple flyer that can be distributed to their workers with information containing the requirements of the Law. As for the posting of the no-smoking signs on their vehicles, Yuma County encourage them to use the No Smoking stickers in a temporary fashion while they are doing business in Arizona, such as hanging the No Smoking sign inside the bus. These companies have been very cooperative in enforcing the Smoke Free Act and are taking it very seriously.

Health educators were also able to contact smaller privately owned taxi services, and provide education about the Act. “We want to ensure that these companies are in compliance and that those using these transportation venues have the

benefit of smoke-free environments as they travel”, said Suzanne Cooper, Yuma County Health Educator.

#### ***La Paz County: Measuring the Public Support of the Law***

La Paz County Public Health Education & Prevention Program conducted a Smoke-Free Arizona public opinion survey in the fall of 2008. The survey was conducted using professional online software that enables the target audience to respond in a quick and easy manner. The purpose of the survey was to measure public support of the Law, community compliance, public knowledge of the dangers of secondhand smoke, and also to educate the community on how to file smoking complaints.

The results of the survey revealed that public support of the Smoke-Free Arizona Act is at a staggering 75%. Based on the survey findings, La Paz County will continue outreach to the public, specifically on how to file complaints, continue issuing public service announcements, and will continue routine educational visits. “I was really pleased with the volume of participation. I have a clearer picture of how the Smoke-free Arizona Act is perceived in our county, and the feedback had helped me pinpoint areas where extra technical assistance and education may be needed,” Janan Vences, La Paz County, Smoke-Free Arizona Coordinator.

***“Thank you for helping  
make our dining, shopping,  
and entertainment  
experiences more  
breathable!”***

**La Paz County Citizen,  
Opinion Poll 2008**

#### ***Coconino County: Helping with Smoke-Free Housing***

Coconino County, like most other counties, received a substantial number of complaints involving secondhand tobacco smoke in apartments. Most complaints were associated with secondhand smoke seepage into individual private units, balconies and patios.

Although private residences are exempt from the Act, compliance inspections of the enclosed common areas of the apartment complexes took place. During the inspections, education on secondhand smoke was presented along with a fact sheet. Apartment tenants and managers alike had questions and concerns regarding smoking, secondhand smoke and apartments.

Moreover, there was a continuing interest in smoke free housing. Health educators decided to provide education about the Smoke-Free Arizona Act to major apartment complexes in Flagstaff. During the educational visits, managers were asked if they had a smoking policy in place. Only two of the 51 multi-family housing complexes visited had any sort of existing policy established. Overwhelmingly, most apartment managers’ main concerns were keeping their units rented and legality questions concerning smoke free policies. In response a fact sheet was created addressing the requirements of the Act, health and financial benefits of smoke free multi unit housing, and legal concerns for the landlord.

Several apartment complexes expressed interest in exploring the idea of smoke free multi unit housing. As of this writing, Flagstaff has three apartment communities that have some degree of a smoke free policy; one where all buildings are smoke free, one of which will be entirely smoke free by summer’s end and another with some select units smoke free. A fourth community is contemplating how far they want to go with a new policy.

The bottom line for most apartment complexes is keeping their units occupied. A goal of the Coconino County Health Department is that through secondhand smoke education, more multi unit housing complexes will see the health benefits for their tenants and thus adopt smoke-free policies on a voluntary basis. A list of smoke-free apartments is posted on the county website in order to help those relocating to Flagstaff, find smoke free housing.

***Santa Cruz County: Partnering with Resources Involved in the Community***

Reaching out to businesses located in Santa Cruz County has been successful despite the distance between the ADHS Smoke-Free Arizona Program located in Phoenix and the Santa Cruz County community. Efforts are focused on networking with agencies involved in the county. For example, one complaint inspection resulted in establishing contact with the Nogales Fire Department. An educational presentation explaining the basics of the Smoke-Free Arizona Act was presented to approximately 15 firemen and administrators who in turn passed the information along to those who were not able to attend the presentation. Partnering with the Nogales Chamber of Commerce is another channel used to stay in touch with business owners. The Chamber of Commerce provides Smoke-Free Arizona “No Smoking” signs and educational brochures to the community of Nogales.

## 4.0 Compliance

### 4.1 Verifying Compliance through Complaint Response and Routine Inspections

Compliance with the Smoke-Free Arizona Act is continuing to increase throughout the State. Compliance is monitored through complaint response inspections at enclosed public places and places of employment. Additionally, compliance is verified during routine food safety inspections conducted at foodservice establishments, such as bars and restaurants.

Many business proprietors have made steps to go above and beyond the requirements of the Smoke-Free Arizona Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs and moving ashtrays, proprietors have also built outdoor patios, provided designated smoking areas, and established in-house smoking policies that are more strict than the Act to accommodate their employees and customers.

### 4.2 Complaint Investigation

Complaints alleging violations of the Smoke-Free Arizona Act are investigated by all but one of the State’s fifteen counties (*See Map 1.2*). Once a complaint is received and it is determined that the allegations are valid violations of the Act, an unannounced inspection will take place and/or the business proprietor is notified within 15 days of the complaint. When necessary, investigations are performed in pairs, for example, during night inspections and for cases where the evidence may be difficult to find. If a violation of the Act is observed during an inspection, the proprietor is requested to correct the violation at the time of the inspection. If the violation is not corrected at that time, a re-inspection will take place to verify that a corrective action has been made. Re-inspections have shown to be an effective approach in achieving compliance.

Complainants may follow-up on their complaints by calling the ADHS Smoke-Free Arizona Program or their county health department. Complaint investigation findings are entered into a database that can be accessed by Smoke-Free Arizona Program officials only. Complaints can be located with a complaint identification number that is issued when a complaint is filed, the complainants’ last name (if provided), the business name, address, or cross streets.

### 4.3 Complaint Numbers Stabilize With Increased Compliance throughout Arizona

The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Smoke-Free Arizona Act. Complaints can be filed by one of the following:

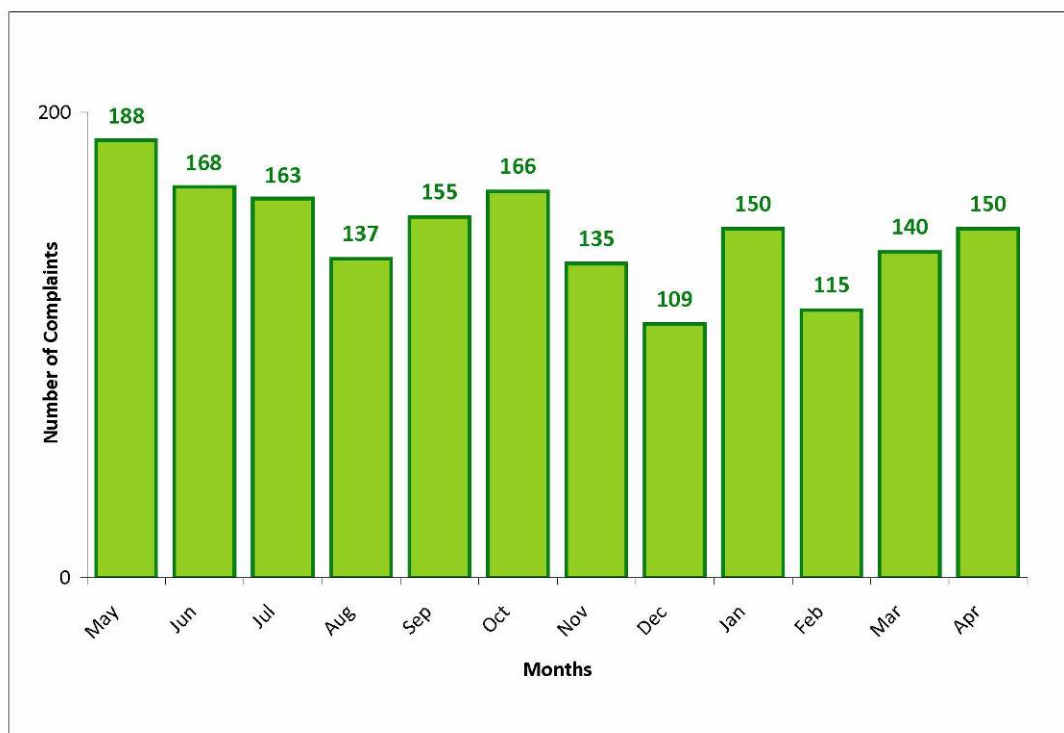
- Filling out an online complaint form at [www.smokefreearizona.org](http://www.smokefreearizona.org),
- Calling the toll-free Smoke-Free Arizona hotline at 877-4-AZ-NOSMOKE (877-429-6676), or
- Sending an e-mail to [nosmokingarizona@azdhs.gov](mailto:nosmokingarizona@azdhs.gov).

*Compliance is monitored through complaint investigations and during routine food safety inspections.*

During the second year after the Law went into effect, between May 1, 2008 and April 30, 2009, a total of 1,776 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. The number of complaints stabilized as compliance improved throughout the State. Most of the complaints were regarding people smoking outside within twenty feet of an entrance and the presence of ashtrays located outside within twenty feet of an entrance.

The table below illustrates the number of complaints filed monthly statewide between May 1, 2008 and April 30, 2009.

**Graph 4.1 Total Complaints Filed Statewide from May 1, 2008 to April 30, 2009**



The counties that received the highest number of complaints are: Maricopa (60%), Pima (15%), Mohave (6%), Yavapai (5%), and Pinal (3%). Of the 1,776 complaints received, 1,564 complaints reporting violations of the Act were for public places and places of employment located in these five counties.

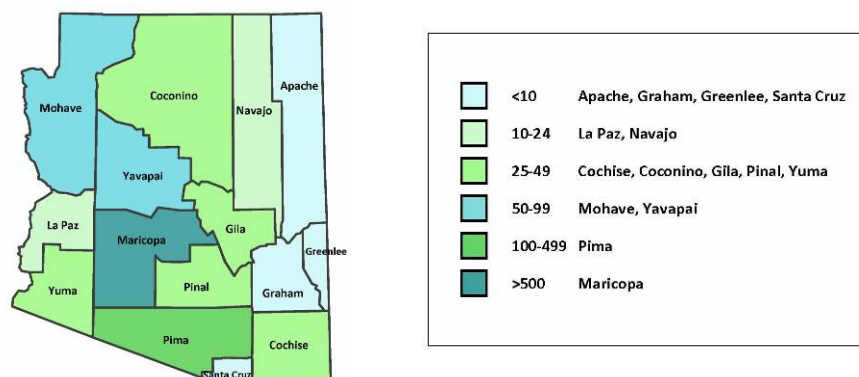
The top five counties that received the highest percentage of complaints between May 1, 2008 and April 30, 2009 are shown in the map below.

**Map 4.1 Top Five Counties with the Highest Percentage of Complaints**



The number of complaints received for each county between May 1, 2008 and April 30, 2009 is shown in the map below.

**Map 4.2 Number of Complaints for Each County between May 1, 2008 and April 30, 2009**

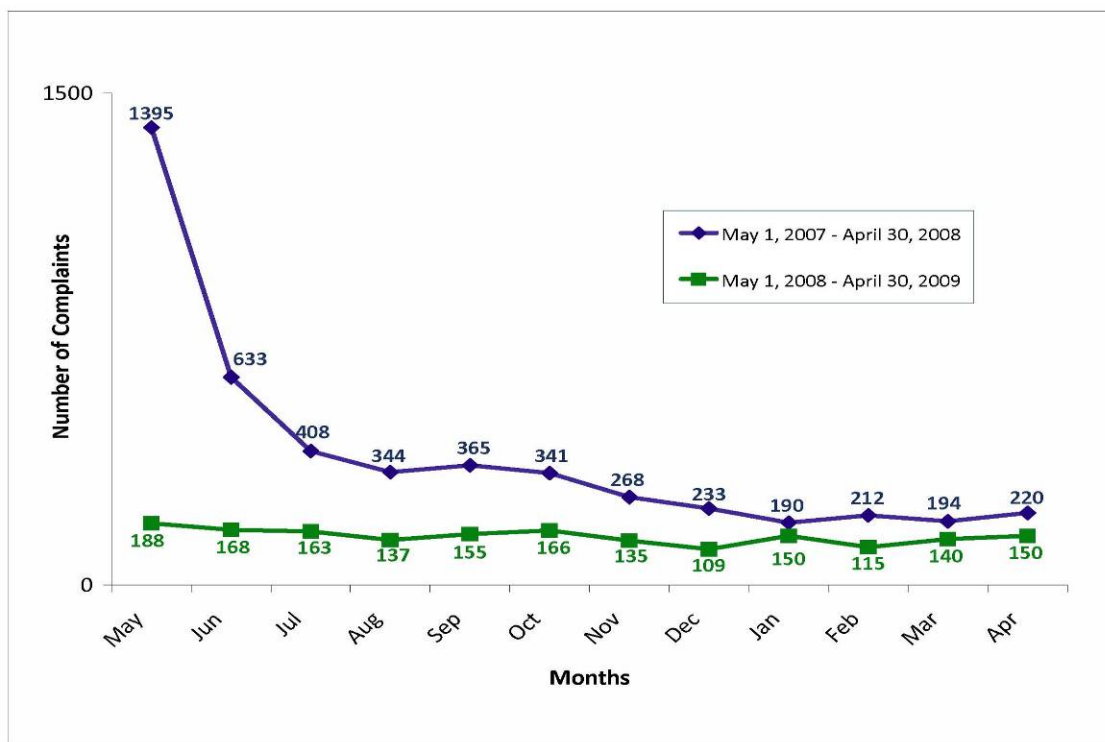


The complaints received during the second year after the Law went into effect transitioned off in comparison to the first year. A total of 4,803 complaints were filed during the first year. During the second year, the number of complaints dropped significantly to a total 1,776 complaints filed statewide. Efforts to educate business owners and incorporating compliance checks during routine food safety inspections resulted in a decline in the number of complaints and thus achieving a higher level of compliance.



The line graph below illustrates the comparison between the number of complaints received during the first and second year after the Law went into effect.

**Graph 4.2 Comparison of Complaints Filed Monthly Statewide between May 1, 2007 and April 30, 2008 and Between May 1, 2008 and April 30, 2009**



## 5.0 Enforcement

### 5.1 Initiating Legal Procedures

**N**ine of the fifteen Arizona county health departments have the delegated authority to enforce the provisions of the Smoke-Free Arizona Act. These include Apache, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima, and Yuma counties. The ADHS Smoke-Free Arizona Program is responsible for enforcement in the remaining six counties, including Cochise, Gila, Maricopa, Pinal, Santa Cruz, and Yavapai (*See Map 1.2*).

If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or a pattern of noncompliance with the Act, he or she is subject to enforcement action and may receive a NOV or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

To attain consistent statewide enforcement of the Act, a toolkit detailing the enforcement routes, administrative or judicial, was given to each county health department by the ADHS Smoke-Free Arizona Program. The toolkit provides guidance to the counties that have the delegated authority to enforce the Act and offers general information to the counties that do not.

*Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner.*

### 5.2 Achieving Compliance through Legal Proceedings

Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner. The ADHS Smoke-Free Arizona Program has had tremendous support from the Education & Health Section attorneys from the Office of the Arizona Attorney General and from the Office of Administrative Rules at ADHS. This support, combined with an effective enforcement protocol, allows ADHS to better serve the county health departments when cases are referred to the ADHS Smoke-Free Arizona Program for enforcement.

Notices of Violation are issued in response to a pattern of noncompliance or willful violations of the Law. A NOV details violations that have been observed and documented during complaint investigations. A total of 40 NOV's were issued statewide between May 1, 2008 and April 30, 2009, 17 of which were issued by the ADHS Smoke-Free Arizona Program. The majority of the NOV's were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. The proprietors that were issued these NOV's faced a total of \$54,800 in civil penalty fines. Numerous settlements were reached with the said recipients. A total of \$14,500 in civil penalty fines were collected. No cases were brought before the Superior Court for injunctive relief this year.

The majority of the NOV's were issued to proprietors of public buildings and places of employment, rather than retail food establishments. 22 NOV's were issued to proprietors of places of employment and public places, such as pest control companies, law offices, collection agencies, auto repair businesses and

barber shops. 18 NOV's were issued to proprietors of retail food establishments, such as bars and grocery stores.

### **5.3 Update on the Retail Tobacco Store Exemption**

In March 2008, the Maricopa County Superior Court ruled that cigar bars are subject to the Act and thus smoking is prohibited in cigars bars. The owner of a cigar bar appealed the decision, alleging that his establishment meets the exemption for retail tobacco store. On September 30, 2008 the Court of Appeals reverted and remanded the decision of the Maricopa County Superior Court.

ADHS filed a petition with the Arizona Supreme Court to review the Court of Appeals decision with regards to a cigar bar using the exemption for retail tobacco stores in order to allow smoking inside the premises. The Arizona Supreme Court denied the petition.

At this time, the Court of Appeals' decision remains in effect. In summary, the Court of Appeals held that a business/facility which satisfies the definition of a "retail tobacco store" under A.R.S. § 36-601.01(A)(10) qualifies for the statutory tobacco store exemption to the smoking ban, even if the business/facility is otherwise prohibited from smoking. The Maricopa County Superior Court will prepare, in late summer 2009, a final order based on the Court of Appeals' ruling.

## 6.0 Protecting Arizonans Health

### 6.1 State of Tobacco Control Report Card: Smoke-Free Arizona Scores a Grade A

**T**he American Lung Association State of Tobacco Control 2008 report tracks progress on key tobacco control policies at the state and federal level and assigns grades to tobacco control laws and regulations enacted.



Arizona is one of 23 states that have passed comprehensive smoke-free workplace laws protecting the public and workers from the dangers of secondhand smoke.

In 2008, Arizona earned a grade A for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report states that the hard-fought efforts of the Smoke-Free Arizona campaign continue to make Arizona a leader in protecting the health of its citizens.

### 6.2 Arizona's Smoking Rate Improves

The 2008 Behavioral Risk Factor Survey shows that Arizona's smoking rate among adults improved from 19.7% in 2007 to 15.7% in 2008. This is a 20% drop in the number of Arizonans that smoke. These new figures state that Arizona has the seventh-lowest rate in the nation in terms of smoking prevalence, a significant decline from a year earlier when Arizona was 25<sup>th</sup>-lowest. This data is coming from the 2008 Behavioral Risk Factor Surveillance System, which is the U.S. Centers for Disease Control and Prevention's annual survey of the nation's health.

### 6.3 Creating Smoke-Free Environments on Hospitals Grounds

The Arizona State Hospital became a smoke-free environment on July 1, 2008, an historic move designed to benefit patients, staff, and visitors. Smoking is no longer permitted on the grounds of the State's only publicly owned and operated psychiatric hospital.

"While approximately 23 percent of the general population smokes, the prevalence is three times higher in persons with other addictions or mental illness," said John Cooper, Arizona State Hospital CEO. "The heavy rate of smoking in our patient populations puts them at higher risk of developing medical consequences from long-term tobacco use, such as emphysema, heart disease, and cancer."

Besides reducing health care costs for patients, the smoke-free campus policy has other benefits. Other states with smoke-free policies in their psychiatric hospitals have observed a reduction in the use of restraints and psychiatric medications, improved patient supervision, and better participation in therapy sessions.

The Arizona State Hospital is not the only facility that has implemented a smoke-free campus policy in Arizona. In 2007, St. Joseph's Hospital in Phoenix, AT Still University and Kingman Regional Medical Center developed a tobacco-free campus policy. In 2008, Banner Heart Hospital, Banner Baywood Medical Center, Mountain Park Health Center and Phoenix Indian Medical Center also adopted a tobacco-free campus policy. Carondelet Health Network previously launched a tobacco-free initiative at all three of its hospitals and most of its facilities. Carondelet's hospitals, including St. Mary's and St. Joseph's in Tucson, and Holy Cross Hospital in Nogales, all became tobacco free in March 2006, and it's newest affiliate, Tucson Heart Hospital, became officially tobacco free in 2007.

Momentum for smoke-free hospital grounds policies is increasing across the U.S. More than 1,600 U.S. hospitals and nursing homes have already implemented smoke-free environment policies.

#### 6.4 Achieving Smoke-Free Compliance at Sky Harbor International Airport

Phoenix Sky Harbor International Airport is one of the top ten busiest airports in the nation. It served nearly 40 million passengers in 2008. 100,000 people pass through Sky Harbor everyday. Sky Harbor has 33,000 employees and more than 75 food and beverage locations, and more than 60 retail shops.

***"We worked closely with all of our stakeholders and our staff to ensure that the regulations associated with the Smoke-Free Arizona Act were understood, communicated and enforced," Becky Gawin, Deputy Aviation Director***

*"The City of Phoenix Aviation Department has taken its compliance of the Smoke-Free Arizona Act very seriously. We went to great lengths to ensure that we comply with the Law, while facilitating the needs of non-smokers and smokers alike," Paul Blue, Assistant Aviation Director.*

##### **Sky Harbor's Compliance Actions:**

The Aviation Department responded to other requirements of the Smoke-Free Arizona Act by completing the following tasks by May 1, 2007:

- ✓ Removing ashtrays from areas where smoking is now prohibited.
- ✓ Smoking facilities located in airport concessions and smoking lounges became nonsmoking on May 1, 2007.
- ✓ Designating specific outdoor areas for smoking to help the public comply with the new Law and closed or relocated existing outdoor smoking areas to be compliant with the Law.
- ✓ 1100 required "No Smoking" signs meeting the Smoke-Free Arizona Act requirements were installed at all facility entrances and other areas where smoking is not permitted.
- ✓ 200 additional new signs were designed and installed to improve way-finding to designated smoking areas and remind the public not to smoke in nonsmoking areas.
- ✓ 525 City of Phoenix vehicles and 98 airport buses were provided with required signs including "No Smoking" decals in all passenger windows.
- ✓ Letters were sent to all airport tenants informing them of the Smoke-Free Arizona Act.
- ✓ The Aviation Department sent out weekly emails to all airport tenants updating them and reminding them of implementation requirements for the new Law.
- ✓ Public address announcements for airport terminals and visual paging messages play continuously to remind passengers of the Smoke-Free Arizona Act.

- ✓ Information on Smoke-Free Arizona is located on the Sky Harbor website [phxskyharbor.com](http://phxskyharbor.com), as well as in Sky Harbor publications.
- ✓ Smoke-Free Arizona information is announced in Rental Car Center and inter-terminal parking shuttle videos.
- ✓ A letter from Aviation Director, Danny Murphy, was sent to 700 Aviation Department employees to inform them of the Smoke-Free Arizona Act.
- ✓ 10,000 educational cards were printed for the public and employees and are currently being distributed by customer service staff and our volunteer Navigators.
- ✓ Developed training material and provided staff briefings regarding the new Law for Aviation Department employees who have enforcement or customer service responsibilities as part of their job duties.
- ✓ Provided training for Communications Dispatchers on how the new Law impacts their job and how to handle potential complaints.
- ✓ Provided update briefings to various airport tenants and stakeholders at regular meetings including power point presentations and handouts.
- ✓ Met with a number of airport tenants to assist with individual concerns about smoking and nonsmoking locations.

“We worked closely with all of our stakeholders and our staff to ensure that the regulations associated with the Smoke-Free Arizona Act were understood, communicated and enforced. We successfully educated employees and contractors as well as our customers and we continue this education process through publications, our Web site, overhead announcements and signage,” says Becky Gawin, Deputy Aviation Director.



## 7.0 Economic Impact Study

**A**DHS contracted with the W.P. Carey School of Business at Arizona State University to conduct an economic impact study about the effects of the Smoke-Free Arizona Act on the restaurant and bar industry in Arizona.

In order to assess the economic effect of the statewide ban, two independent analyses were conducted as part of this study. The first analysis consisted of a survey of eating and drinking establishments across Arizona. The initial survey was conducted in May 2007, before the Act went into effect. The survey was repeated a year later. The second analysis reviewed actual aggregate bar and restaurant sales data, comparing sales from before and after the implementation of the Act.

The report on the economic impact study was released on September 2, 2008. Contrary to what many opponents of the Smoke-Free Arizona Act claimed before its passage in November of 2006, the report states that the Act did not result in any distinguishable large-scale economic effects on the restaurant and bar industry in Arizona. This conclusion is consistent with most studies that have examined the effect of smoking bans by analyzing actual sales data.

***“My hope is that Arizona will now become one more example of how the creation of a smoke-free state can be done without having a serious impact on local businesses,” Bill J. Pfeifer, President and CEO of the American Lung Association of Arizona***

Based on the survey, some establishments such as bars with large, well-furnished outdoor patios indicated that they were actually benefiting from the smoking ban, while others with only inside seating may have not.

The full report is available online at [www.smokefreearizona.org](http://www.smokefreearizona.org).

## 8.0 Conclusion

**T**he successful implementation of the Smoke-Free Arizona Act is due to the tremendous efforts of county health educators and county environmental health inspectors providing education and compliance assistance to business owners in their community.

Many business proprietors have gone above and beyond the requirements of the Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs, and moving ashtrays, proprietors have also provided limited designated smoking areas, and established in-house smoking policies that are more strict than the Act to accommodate their employees and customers. For example, numerous hospitals including the Arizona State Hospital have declared their entire campus as “smoke-free,” and other public places such as Sky Harbor International Airport provides only a limited number of designated smoking areas on their premises.

The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Act by filling out a complaint form online, by calling the toll-free complaint line or by sending an Email. A total number of 1,776 complaints were filed between May 1, 2009 and April 30, 2009. Most of the complaints were regarding people smoking outside, but within 20 feet of an entrance, and the presence of an ashtray outside within 20 feet of an entrance. Only a minimal number of complaints resulted in legal proceedings. Enforcement took place only when educational efforts failed to gain compliance with the Act in a timely manner.

We are proud to state that two years after the Law went into effect; a high level of compliance has been achieved statewide. Most employers responded well in creating smoke-free workplaces thus resulting in cleaner air for Arizona residents.

The *2008 American Lung Association State of Tobacco Control Report* gave a grade A to the state of Arizona for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report states that the hard-fought efforts of the Smoke-Free Arizona campaign continue to make Arizona a leader in protecting the health of its citizens.

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